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CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1934

No. 146

CLIFTON MANUFACTURING COMPANY

Petitioner,

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

W. A. SUTHERLAND
JOSEPH B. BRENNAN
Counsel for Petitioner

Of Counsel:
JONES, EVINS, POWERS & JONES
SUTHERLAND, TUTTLE & BRENNAN

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PETITION

Clifton Maunfacturing Company, a corporation, by its counsel, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit entered in the above case on April 4, 1934, (R. 149), affirming the judgment of the United States District Court for the Western District of South Carolina (R. 82).

QUESTION PRESENTED

Did the statute of limitations upon the assessment and collection of additional income and excess profits taxes for Petitioner's fiscal year ended March 31, 1918, begin to run upon the filing of Petitioner's original income and excess profits tax returns for that year on May 28, 1918, prior to the enactment of the Revenue Act of 1918?

STATUTES INVOLVED

The pertinent statutory provisions are set forth in the Appendix, pp. 10-13, *infra.*

STATEMENT

Petitioner brought suit against the United States to recover income and excess profits taxes for the fiscal year ended March 31, 1918, which Petitioner alleged had been collected after the expiration of the statute of limitations. (R. 1). Petitioner filed its original income and excess profits tax return for its fiscal year ended March 31, 1918, on May 28, 1918. (R. 62). The Revenue Act of 1918 was approved on February 24, 1919, and was made applicable retroactively to fiscal years ending in 1918. See Sections 200, 205(a), pp. 11, 12, *infra.* Petitioner filed an additional or amended income and profits tax return for said fiscal year on April 29, 1919. (R. 4, 45, 62). The amended return showed an additional tax resulting from the increased rates imposed by the 1918 Act, but the information and data upon which the tax was computed were exactly the same as that already disclosed in the original returns. (R. 4, 5, 46).

It is undisputed that the applicable period of limitation on assessment and collection was five years from the filing of whatever returns started the running of the statute.[1]

On June 21, 1923, which was more than five years after the filing of the original returns, but less than five years after the filing of the amended return, the Commissioner requested Petitioner to execute the first of a series of purported waivers of the limitation period on assessment and collection. (R. 63). Subsequently, the Commissioner made an assessment in September, 1926, and collections in September and October, 1926 (R. 62), the validity of which would depend upon whether the purported waivers were valid and not voidable.

Petitioner contended that the purported waivers were invalid because executed under a mutual mistake of the parties and misrepresentation by the Government agents to the effect that the limitation period, provided by the statute or by valid existing waivers, had not expired when each of the purported waivers was requested. (R. 11-16, 40-43). Pursuant to Section 274(b) of the Judicial Code (28 U. S. C. Sec. 398), Petitioner prayed for equitable relief against the defense of waiver (R. 10, 17, 18), if the Court should consider the purported waivers valid at law.

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[1]See Section 250(d) of the 1918 and 1921 Acts, Section 277(a)(2) of the 1924 Act and Section 277(a)(3) of the 1926 Act, p. 10, *infra*.

The District Court held that the limitation period did not begin to run until the filing of the amended return, and that therefore it had not expired when the first of the purported waivers was requested and filed. (R. 71-76). In view of this holding, the District Court pointed out that questions of mutual mistake and misrepresentation became moot (R. 77), and judgment was rendered against Petitioner (R. 82).

The judgment of the District Court was affirmed by the Circuit Court of Appeals in a per curiam opinion, holding that the period of limitations did not begin to run until the filing of the amended return, and relying upon the recent decisions of the Circuit Court of Appeals for the Ninth Circuit in the cases of *Zellerbach Paper Company v. Helvering*, 69 F. (2d) 852, and *National Paper Products Company v. Helvering*, 69 F. (2d) 857. (R. 148).

SPECIFICATION OF ERRORS

1. The Circuit Court of Appeals erred in holding that the statutory period of limitation on assessment and collection of income and profits taxes for Petitioner's fiscal year ended March 31, 1918, did not begin to run upon the filing of Petitioner's original income and profits tax returns on May 28, 1918.

2. The Circuit Court of Appeals erred in holding that the statutory period of limitation on assessment and collection of income and profits taxes for Petitioner's fiscal year ended March 31, 1918, began to run upon the filing of Petitioner's amended return on April 29, 1919.

REASONS FOR GRANTING THE WRIT

1. The question involved in this case is substantially the same as the question involved in the cases of *Zellerbach Paper Company v. Helvering* and *National Paper Products Company v. Helvering*, October Term 1934, Nos. 35-39, in which cases this Court granted writs of certiorari to the Circuit Court of Appeals for the Ninth Circuit on June 4, 1934.

2. The decision of the Circuit Court of Appeals in this case is in conflict with the following decisions of other federal appellate courts: *Myles Salt Co. v. Commissioner*, 49 F. (2d) 232 (C. C. A. 5th); *Isaac Goldmann Co. v. Burnet*, 51 F. (2d) 427 (App. D. C.); *Valentine-Clark Co. v. Commissioner*, 52 F. (2d) 346 (C. C. A. 8th).

3. In holding that the statutory period of limitation on assessment and collection of income and profits taxes for a fiscal year ending in 1918 does not begin to run upon the filing of the original returns filed for such year prior to the enactment of the Revenue Act of 1918, the Circuit Court of Appeals has decided an important question of federal law, which has not been, but should be, settled by this Court.

Wherefore, it is respectfully prayed that the petition be granted.

W. A. SUTHERLAND
JOSEPH B. BRENNAN
Atlanta, Georgia
Counsel for Petitioner.

BRIEF IN SUPPORT OF PETITION

OPINIONS BELOW

The opinion of the District Court (R. 59) is reported at 3 F. Supp. 508. The opinion of the Circuit Court of Appeals (R. 147) is reported at 70 F. (2d) 102.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered April 4, 1934. (R. 149). Jurisdiction is conferred upon this Court by Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED, STATUTES INVOLVED, ETC.

A statement of the question presented, specification of errors, and a statement of the case will be found in the petition. The statutes involved appear in the Appendix.

ARGUMENT

The question involved in this case is substantially the same as the question involved in the cases of *Zellerbach Paper Company v. Helvering* and *National Paper Products Company v. Helvering*, October Term 1934, Nos. 35-39, in which cases this Court granted writs of certiorari to the Circuit Court of Appeals for the Ninth Circuit on June 4, 1934. Nos. 35 and 36 involve 1925 fiscal years and Nos. 37, 38 and 39 involve 1921 fiscal years, but the language of the pertinent statutory provisions is the same and the applicable principles are the same as those material to the present case, which involves a 1918 fiscal year.

The decisions of the Circuit Court of Appeals for the Ninth Circuit in the cases cited above were relied upon by the Circuit Court of Appeals for the Fourth Circuit in the case at bar. (R. 148). In Nos. 37, 38 and 39 the Circuit Court of Appeals for the Ninth Circuit relied upon the decision of the District Court in the case at bar. See *Zellerbach Paper Company v. Helvering*, 69 F. (2d) 852, 855. In referring to the reasoning of the District Court in the case at bar, Circuit Judge Wilbur, in the *Zellerbach Paper Company* case, says:

> "It is sufficient for our purposes to state that that reasoning is in the main applicable to the effect of similar provisions in the Revenue Act of 1921 as related to the superseded Revenue Act of 1918 and the regulations thereunder." 69 F. (2d) at 856.

In the *Zellerbach Paper Company* cases, Nos. 37, 38 and 39, the Solicitor General filed a memorandum for the respondent, acquiescing in the petition for writs of certiorari, and stating that the decisions of the Circuit Court of Appeals in those cases are supported by the decision of the Circuit Court of Appeals for the Fourth Circuit in the case at bar.

The decision of the Circuit Court of Appeals in this case is in conflict with the decisions of three other federal appellate courts involving 1921 fiscal years. See *Myles Salt Co. v. Commissioner*, 49 F. (2d) 232 (C. C. A. 5th); *Isaac Goldmann Co. v. Burnet*, 51 F. (2d) 427 (App. D. C.); *Valentine-Clark Co. v. Commissioner*, 52 F. (2d) 346 (C. C. A. 8th). In the first two of the cases just cited, the Courts relied largely upon

what they considered indisputable principles relating to 1918 fiscal years. See *Myles Salt Co. v. Commissioner*, 49 F. (2d) at 233; *Isaac Goldmann Co. v. Burnet*, 51 F. (2d) at 428.

The District Court in this case suggested a possible distinction from the three cases cited in the preceding paragraph on the grounds that in these cases no new return was filed after the enactment of the new act and the only material change effected by the new act was the disallowance of a credit which was apparent on the face of the original return. (R. 74, 75). But such suggested distinctions were rejected by the Circuit Court of Appeals for the Ninth Circuit. See *National Paper Products Company v. Helvering*, 69 F. (2d), 857, 863.

It is admitted by the pleadings in the case at bar that the original return contained all of the information and data which were disclosed on the additional or amended return and that the additional tax shown by the amended return resulted solely from the increased rates imposed by the new act. R. 4, 5, 46).

The importance of the question involved in this case is apparent from the fact that the same question, based upon the same principles and similar language in the applicable statutory provisions, arises with respect to other fiscal years where returns are filed prior to the enactment of a new revenue act which becomes applicable retroactively to such fiscal years. All of the modern revenue acts have been made applicable retroactively at least to the begin-

ning of the calendar year in which they have been adopted. It is important therefore that this court settle the question involved in this case.

CONCLUSION

It is submitted that the decision of the Circuit Court of Appeals in this case is in conflict with the decisions of three other federal appellate courts; that the question is an important one of federal law; and that it is substantially the same as the question involved in other cases which are pending before this Court on writs of certiorari which have already been granted.

Respectfully submitted,

W. A. SUTHERLAND
JOSEPH B. BRENNAN
Atlanta, Georgia
Counsel for Petitioner

Of Counsel:
JONES, EVINS, POWERS & JONES
SUTHERLAND, TUTTLE & BRENNAN
Atlanta, Georgia

APPENDIX

Revenue Act of 1921, 42 Stat. 227:

> Sec. 250(d). The amount of income, excess-profits, or war-profits taxes due under any return made * * * under prior income, excess-profits, or war-profits tax Acts * * * shall be determined and assessed within five years after the return was filed, * * * and no suit or proceeding for the collection of any such taxes due under this Act or under prior income, excess-profits, or war-profits tax Acts, * * * shall be begun, after the expiration of five years after the date when such return was filed.

Revenue Act of 1924, 43 Stat. 253:

> Sec. 277(a)(2). The amount of income, excess-profits, and war-profits taxes imposed by * * * the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act of 1918, and by any such Act as amended, shall be assessed within five years after the return was filed * * *

Revenue Act of 1926, 44 Stat. 9:

> Sec. 277(a)(3): The amount of income, excess-profits, and war-profits taxes imposed by * * * the Revenue Act of 1916, the Revenue Act of 1917, and by any such Act as amended, shall be assessed within five years after the return was filed * * *

Revenue Act of 1918, 40 Stat. 1057, and Revenue Act of 1921, 42 Stat. 227:

> Sec. 239. That every corporation subject to taxation under this title * * * shall make a re-

turn, stating specifically the items of its gross income and the deductions and credits allowed by this title. The return shall be sworn to by the president, vice president, or other principal officer and by the treasurer or assistant treasurer.

Revenue Act of 1918, 40 Stat. 1057:

Sec. 205(a). That if a taxpayer makes return for a fiscal year beginning in 1917 and ending in 1918, his tax under this title for the first taxable year shall be the sum of: (1) the same proportion of a tax for the entire period computed under Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917 and under Title I of the Revenue Act of 1917, which the portion of such priod falling within the calendar year 1917 is of the entire period, and (2) the same proportion of a tax for the entire period computed under this title at the rates for the calendar year 1918 which the portion of such period falling within the calendar year 1918 is of the entire period: *Provided*, that in the case of a personal service corporation the amount to be paid shall be only that specified in clause 1.

Any amount heretofore or hereafter paid on account of the tax imposed for such fiscal year by Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917, and by Title I of the Revenue Act of 1917, shall be credited towards the payment of the tax imposed for such fiscal year by this act, and if the amount so paid exceeds the amount of such tax imposed by this act, or, in the case of a personal service corpora-

Revenue Act of 1921, 42 Stat. 227:

> tion, the amount specified in clause 1, the excess shall be credited or refunded in accordance with the provisions of Section 252.
>
> Sec. 205(a). That if a taxpayer makes return for a fiscal year beginning in 1920 and ending in 1921, his tax under this title for the taxable year 1921 shall be the sum of: (1) the same proportion of a tax for the entire period computed under Title II of the Revenue Act of 1918 at the rates for the calendar year 1920 which the portion of such period falling within the calendar year 1920 is of the entire period, and (2) the same proportion of a tax for the entire period computed under this title at the rates for the calendar year 1921, which the portion of such period falling within the calendar year 1921 is of the entire period.
>
> Any amount paid before or after the passage of this Act on account of the tax imposed for such fiscal year by Title II of the Revenue Act of 1918 shall be credited toward the payment of the tax imposed for such fiscal year by this Act, and if the amount so paid exceeds the amount of such tax imposed by this Act, the excess shall be credited or refunded in accordance with the provisions of section 252.

Revenue Act of 1918, 40 Stat. 1057:

> Sec. 200. * * * The first taxable year, to be called the taxable year 1918, shall be the calendar year 1918 or any fiscal year ending during the calendar year 1918.

Revenue Act of 1921, 42 Stat. 227:

> Sec. 200. * * * The first taxable year, to be called the taxable year 1921, shall be the calendar year 1921 or any fiscal year ending during the calendar year 1921.

Revenue Act of 1918, 40 Stat. 1057, and Revenue Act of 1921, 42 Stat. 227:

> Sec. 227(a). That returns * * * shall be made on or before the fifteenth day of the third month following the close of the fiscal year * * * .